FEDERATION REPORTS.

KHOR HONG GUAN & MOH OOI HEE v. REX.

[App. Crim. Juris. (Jobling, J.) September 17, 1949]

[Penang — Criminal Appeal No. 28 of 1949]

Bail Bond — Surety for appearance of accused before the Magistrate's Court — Non-appearance of accused before Sessions Court — Forfeiture of Bond.

In this case the two appellants had jointly executed a bail bond declaring that the accused, for whom they stood surety, would appear at the Magistrate's Court before whom the case was pending. The accused appeared on several occasions in the Magistrate's Court and the case was then transferred to the Sessions Court, at which Court he failed to appear.

Held, that there had been no breach of the conditions of the bail bond and that the order forfeiting it should be set aside.

Cases referred to:—

(1) *Sirkar v. Rex* I.L.R. 30 Cal. 107.

(2) *Rex v. Chatterjee* I.L.R. 36 Cal. 749.

(3) *Maung Nge v. King-Emperor* I.L.R. 2 Rang. 581.

CRIMINAL APPEAL from Sessions Court.

T. E. Conaghan for the appellants.

C. Wylie for the respondent.

Jobling, J.: — The Appellants jointly executed a bond for $10,000/- as sureties for the appearance of one Tan Chin Loon before the Court on a criminal charge and on Tan Chin Loon failing to appear to answer the charge the Appellants were called upon to show cause why payment of the amount of the bond should not be enforced.

After hearing the Appellants the learned President of the Sessions Court ordered that payment of $2,000/- be enforced against each Appellant.

The facts are that the accused Tan Chin Loon was charged in the Magistrates' Court and released on bail; that he appeared on several occasions in the Magistrates' Court and the case was then transferred to the Sessions Court, at which Court he failed to appear on the appointed day. The bail had been extended by the Magistrate and the bond was regarded as still in force.

The bond executed by the Appellants was on a form printed in the Malay language and the English translation of the document contained the following passage: "I declare (or we jointly and severally and everyone of us declare) myself surety (or ourselves sureties) for the said Tan Chin Loon that he shall attend at the Magistrate's Court on 20th January, 1949 (or otherwise when called upon) to answer the charge ....."

The Appellants have appealed on the ground that they only bound themselves to secure the accused's appearance in the Magistrates' Court and not for his appearance in the Sessions Court.

At the hearing of the appeal the Deputy Public Prosecutor produced a literal translation of the bail bond by the High Court interpreter which gave a different rendering of the passage I have quoted above, the words "(or on whatever day thereafter as he may be required to attend)" being substituted for the words "(or otherwise when called upon)".

The Deputy Public Prosecutor referred me to the decisions in *Sirkar v. Rex*[1], *Rex v. Chatterjee*[2], and *Maung Nge v. King-Emperor*[3], and indicated that in view of those decisions and the new rendering of the terms of the bond now before the Court he was unable to resist the appeal.

The literal translation of the terms of the bond undoubtedly supports the Appellants' contention and it is clear from the decisions in the Indian Cases referred to above that where a bail bond is executed for the attendance of an accused person at a particular Court it has effected its purpose when the case is transferred to another Court and there is no power to forfeit the bond on the ground of non-appearance of the accused before the Court to which the case is transferred.

I agree therefore that the order appealed against cannot stand and the appeal must be allowed and the order set aside.

I observe that the bond in this case is on a form printed in the Malay language. No particular language has been prescribed for the use of the Court except in the matter of taking evidence (Sections 259 and 260 Criminal Procedure Code) and therefore no legal objection can be taken to the use of a language other than English. But the use of this particular printed form has its dangers and I think the fact that it does not bind the sureties to produce the accused before any Court to which the case may be transferred should be brought to the notice of the authorities for reconsideration of its terms.

Appeal allowed.
Order set aside.